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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LEVI A. LAKE,

11 Plaintiff,

12 v.

13 MTGLQ INVESTORS, L.P., et al.,

14 Defendants.

CASE NO. C17-0495JLR

ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT

15 **I. INTRODUCTION**

16 Before the court are Defendant MTGLQ Investors, L.P.’s (“MTGLQ”) motion for
17 summary judgment (Def. Mot. (Dkt. # 33)), and Plaintiff Levi A. Lake’s cross-motion for
18 summary judgment (Pltf. Mot. (Dkt. # 37)). Defendant New York Community Bank as
19 Servicer for the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for Ohio
20 Savings Bank AKA Amtrust Bank (“NYCB”) joins MTGLQ’s motion for summary
21 judgment. (Joinder (Dkt. # 36).)

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1 The court has considered the parties' submissions, the relevant portions of the
2 record, the judicially noticed public records as described in this order, and the applicable
3 law. Being fully advised,¹ the court GRANTS MTGLQ and NYCB's (collectively,
4 "Defendants") motion for summary judgment and DENIES Mr. Lake's cross-motion for
5 summary judgment.

6 II. BACKGROUND

7 This case arises from a nonjudicial foreclosure. Mr. Lake seeks to quiet title to the
8 property in question. (SAC (Dkt. # 28) ¶ 37.) On November 7, 2005, Mr. Lake
9 refinanced the existing promissory note on his home with a loan from Premier Financial
10 Services, Inc. ("Premier"). (*Id.* ¶ 6.) The loan is secured by a deed of trust encumbering
11 Mr. Lake's residence (the "Property"). (1st McIntosh Decl. (Dkt. # 9), Ex. A (attaching
12 the deed of trust).) The deed of trust lists Mr. Lake as the borrower, Premier as the
13 lender, and Fidelity National Title as the trustee. (*Id.* at 2.)² In addition, the deed of trust
14 lists MERS as the beneficiary, solely as nominee of the lender and the lender's successors
15 and heirs. (*Id.*)

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18 ¹ No party requested oral argument, and the court determines that oral argument would
19 not help its disposition of the motions. *See* Local Rules W.D. Wash. LCR 7(b)(4).

20 ² The court takes judicial notice of the matters of public record appended to the
21 declarations of Joseph W. McIntosh and Levi A. Lake (*See* 1st McIntosh Decl. (Dkt. # 9); 2nd
22 McIntosh Decl. (Dkt. # 18); Lake Decl. (Dkt. # 16).) Under Federal Rule of Evidence 201, a
court may take judicial notice of matters of public record. *See Coto Settlement v. Elsenberg*, 593
F.3d 1031, 1038 (9th Cir. 2010); *Simmons First Nat'l Bank v. Lehman*, No. C-13-02876 DMR,
2015 WL 632393, at *1 (N.D. Cal. Feb. 13, 2015) (taking judicial notice of official public
records of the County Recorder's Office in ruling on a motion for summary judgment).

1 The promissory note was subsequently transferred. (*See* Sahyers Decl. (Dkt.
2 # 20), Ex. A (attaching Mr. Lake’s promissory note).) The note bears two indorsements:
3 (1) from Premier to Ohio Savings Bank, without recourse, dated November 7, 2005, and
4 (2) a blank indorsement, without recourse, executed by Robert Diamond, an Ohio
5 Savings Bank authorized agent. (*Id.*) The deed of trust was also subsequently assigned.
6 The deed of trust was assigned from MERS to New York Community Bank on October
7 25, 2010. (SAC ¶ 8; Lake Decl., Ex. C.) NYCB assigned the deed of trust to Nationstar
8 Mortgage LLC (“Nationstar”) on August 25, 2011. (SAC ¶ 9; Lake Decl., Ex. D.)
9 Nationstar assigned the deed of trust to MTGLQ on January 17, 2017. (SAC ¶ 11; Lake
10 Decl., Ex. E.)

11 Despite occupying the Property, Mr. Lake ceased payments on his loan in 2010.
12 (SAC ¶ 7.) On August 5, 2010, AmTrust Bank, as servicer of the loan, notified Mr. Lake
13 that he was in default and that AmTrust would accelerate the remainder of the amount
14 owed if Mr. Lake did not make a payment within 30 days. (*Id.* ¶ 14.) Mr. Lake made no
15 payments. (*Id.*)

16 In May 2015, Nationstar, which was now the servicer of the loan for Fannie Mae,
17 hired Quality Loan Service Corporation of Washington (“Quality”) to advance a
18 non-judicial foreclosure of the Property. (*See* Herbert-West Decl. (Dkt. # 34) ¶ 4; SAC,
19 Ex. E (“Not. of Default”) at 1.) In December 2015, Nationstar appointed Quality as
20 successor trustee and provided Quality with a declaration stating that Nationstar was now
21 the holder of Mr. Lake’s promissory note. (*See* Herbert-West Decl., Ex. A (“Successor
22 Appointment”), Ex. B (“Nationstar Beneficiary Decl.”).) On January 29, 2016, Quality

1 served a notice of default on the Property. (Not. of Default). The notice identifies Fannie
2 Mae as the owner and Nationstar as the loan servicer. (*Id.*) In April 2017, Quality
3 obtained a declaration stating that MTGLQ was now the holder of Mr. Lake's note, and
4 issued a notice of trustee's sale identifying MTGLQ as the beneficiary. (*See*
5 Herbert-West Decl., Ex. C ("MTGQL Beneficiary Decl."); 2nd McIntosh Decl. ¶ 2,
6 Ex. A ("Notice of Tr. Sale").)

7 Mr. Lake filed this action in King County Superior Court on March 15, 2017. (*See*
8 Compl. (Dkt. # 1-1).) MTGLQ removed the action to this court and filed a motion to
9 dismiss the complaint. (Not. of Rem. (Dkt. # 1); MTD (Dkt. # 8).) Before the court ruled
10 on that motion, Mr. Lake filed an amended complaint. (*See* FAC (Dkt. # 13).)³ The
11 court granted MTGLQ's motion to dismiss and dismissed Mr. Lake's first amended
12 complaint with leave to amend. (*See* 6/12/2017 Order (Dkt. # 25).)

13 On June 30, 2017, Mr. Lake timely filed a second amended complaint, naming
14 MTGLQ and NYCB as defendants.⁴ (*See* SAC ¶¶ 2-3.)⁵ Mr. Lake seeks to quiet title on
15 the theory that Quality lacked authority to issue the notice of default, and any foreclosure
16 action is now time-barred. (*See id.*) On July 20, 2017, MTGQL filed a motion for

17 ³ Mr. Lake also filed and subsequently withdrew a motion to remand. (*See* Mot. to
18 Remand (Dkt. # 15); Not. to Withdraw Mot. to Remand (Dkt. # 22).)

19 ⁴ Mr. Lake's complaint names as defendant "Ohio Savings Bank aka AmTrust Bank"
20 (SAC ¶ 3), but NYCB appears "as servicer for FDIC as receiver for Ohio Savings Bank aka
Amtrust Bank" (*see* Not. of Appearance (Dkt. # 35)).

21 ⁵ Throughout MTGLQ's motion for summary judgment, MTGLQ refers to Mr. Lake's
22 second amended complaint as his "Third Amended Complaint ('TAC')." (*See* Def. Mot. at 1
n.1.) Although MTGLQ uses a different nomenclature, MTGLQ and the court refer to the same
filing, which is docket number 28.

1 summary judgement. (*See* Def. Mot.) On July 28, 2017, NYCB filed a joinder to
2 MTGLQ's motion for summary judgment. (*See* Joinder.) On August 4, 2017, Mr. Lake
3 filed a cross-motion for summary judgment. (*See* Pltf. Mot.) The cross-motions for
4 summary judgment and the motion to join are now before the court.⁶

5 **III. ANALYSIS**

6 **A. Legal Standards**

7 **1. Summary Judgment Standard**

8 Summary judgment is appropriate if the evidence, when viewed in the light most
9 favorable to the non-moving party, demonstrates "that there is no genuine dispute as to
10 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.
11 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,
12 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
13 there is no genuine dispute of material fact and that he or she is entitled to prevail as a
14 matter of law. *Celotex*, 477 U.S. at 323. A material fact is a fact relevant to the outcome
15 of the pending action. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If

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17 ⁶ On August 28, 2017, MTGLQ filed a notice that Mr. Lake filed for bankruptcy on
18 August 24, 2017. (*See* Notice (Dkt. # 41).) MTGLQ argues that Mr. Lake's bankruptcy does not
19 preclude the court's consideration of this motion for summary judgment. (*Id.* at 1.) The court
20 agrees. The automatic stay under the Bankruptcy Code "does not prevent . . . a defendant from
21 protecting its interests against claims brought by the debtor." *In re Palmdale Hills Prop., LLC*,
22 654 F.3d 868, 875 (9th Cir. 2011). The automatic stay applies only to actions "against the
debtor." *See* 11 U.S.C. § 362(a)(1) (stating that a bankruptcy petition "operates as a
stay . . . of . . . the commencement or continuation . . . of a judicial . . . action against the
debtor"). Thus, a bankruptcy stay does not preclude the court from ruling on a dispositive
motion filed by a defendant in a debtor's pre-bankruptcy petition lawsuit. *See Petheram v. Wells
Fargo Bank*, No. C13-1016JLR, 2013 WL 4761049, at *2 (W.D. Wash. Sept. 3, 2013) (granting
the defendants' motion to dismiss the plaintiff's complaint even though the plaintiff filed for
bankruptcy).

1 the moving party meets his or her burden, then the non-moving party “must make a
2 showing sufficient to establish a genuine dispute of material fact regarding the existence
3 of the essential elements of his case that he must prove at trial” in order to withstand
4 summary judgment. *Galen*, 477 F.3d at 658. In response to a properly supported
5 summary judgment motion, the nonmoving party may not rest upon mere allegations or
6 denials in the pleadings, but must present significant and probative evidence to support its
7 claim or defense. *See Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551,
8 1558 (9th Cir. 1991).

9 “[W]hen parties submit cross-motions for summary judgment, each motion must
10 be considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc. v. Riverside*
11 *Two*, 249 F.3d 1132, 1136 (9th Cir. 2011) (internal quotation marks and alterations
12 omitted). Thus, “the court must review the evidence submitted in support of each
13 cross-motion.” *Id.*

14 2. Washington’s Deed of Trust Act

15 The Washington Deed of Trust Act (“DTA”), RCW ch. 61.24, governs statutory
16 deeds of trust in Washington and establishes the procedures required for nonjudicial
17 foreclosure. *See Massey v. BAC Home Loans Servicing LP*, No. C12-1314JLR, 2012 WL
18 5295146, at *1 (W.D. Wash. Oct. 26, 2012). Under the DTA, a deed of trust is a form of
19 three-party mortgage, involving not only a lender and a borrower, but also a neutral
20 third-party called a trustee. *See Buse v. First Am. Title Ins. Co.*, No. C08-0510MJP, 2009
21 WL 1543994, at *1 (W.D. Wash. May 29, 2009). The trustee holds an interest in the title
22 to the borrower’s property on behalf of the lender, who is also called the beneficiary. *Id.*

1 Should the borrower default on his loan, the beneficiary need not petition a court to
2 initiate foreclosure proceedings but may instruct the trustee to conduct a non-judicial
3 foreclosure. RCW § 61.24.010(2), .020, .030. The beneficiary may replace the trustee
4 with a successor trustee to initiate the foreclosure. RCW § 61.24.010(2). Before
5 initiating foreclosure, the trustee confirms that the beneficiary is entitled to enforce the
6 note by obtaining a declaration from the beneficiary that it is “the actual holder of the
7 note.” RCW 61.24.030(7)(a); *Brown v. Wash. State Dep’t of Commerce*, 359 P.3d 771,
8 784 (Wash. 2015).

9 Traditionally, the beneficiary of a deed of trust was “the lender who has loaned
10 money to the homeowner.” *Bain v. Metro. Mortg. Grp., Inc.*, 285 P.3d 34, 36 (Wash.
11 2012). But lenders “have long been free to sell that secured debt, typically by selling the
12 promissory note signed by the homeowner,” and so the DTA defines “beneficiary” more
13 broadly as “the holder of the instrument or document evidencing the obligations secured
14 by the deed of trust.” *Id.* (quoting RCW § 61.24.005(2)). In *Bain v. Metropolitan*
15 *Mortgage Group, Inc.*, the Washington Supreme Court interpreted the DTA’s definition
16 of “beneficiary” and held that a DTA beneficiary must be the “holder of the promissory

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1 | note.” *Id.* at 36, 43. Thus, the Mortgage Electronic Registration System Inc. (“MERS”)⁷
2 | could not lawfully foreclose because MERS was not the holder of the note, even though
3 | the deed of trust listed MERS as the “beneficiary” and MERS was purportedly “the
4 | holder of the deed of trust.” *Id.* at 42-44.

5 | “Holder” status, and thus DTA beneficiary status, turns on possession of the note,
6 | not ownership. In other words, a “holder” does not need to own the note to be the DTA
7 | beneficiary. *Brown*, 359 P.3d at 784. Although the initial lender is both the owner of the
8 | note (the party with the beneficial interest who is entitled to the payments on the note
9 | and/or the proceeds of a foreclosure sale) and the holder of the note (the statutory
10 | beneficiary entitled to enforce the note, foreclose, and negotiate modifications), those
11 | rights are often separated when the lender sells the note on the secondary market. *See*
12 | *Marts v. U.S. Bank Nat’l Ass’n*, 166 F. Supp. 3d 1204, 1209 (W.D. Wash. 2016); *Brown*,
13 | 359 P.3d at 779. In *Brown v. Washington State Department of Commerce*, the
14 | Washington Supreme Court held that a loan servicer was the DTA beneficiary because it
15 | was the holder of the note, even though Freddie Mac owned the beneficial interest. 359
16 | P.3d at 784.

17 | ⁷ As explained by the Washington Supreme Court:
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19 | In the 1990s, [MERS] was established by several large players in the mortgage industry.
20 | MERS and its allied corporations maintain a private electronic registration system for
21 | tracking ownership of mortgage-related debt. This system allows its users to avoid the cost
22 | and inconvenience of the traditional public recording system and has facilitated a robust
secondary market in mortgage backed debt and securities. Its customers include lenders,
debt servicers, and financial institutes that trade in mortgage debt and mortgage backed
securities, among others.

Bain, 285 P.3d at 36

1 In concluding that the loan servicer was the holder of the note, the court looked to
2 the definition of “holder” in Washington’s Uniform Commercial Code: the “‘person in
3 possession of a negotiable instrument that is payable either to bearer or to an identified
4 person that is the person in possession.’” *Id.* at 778 (quoting RCW § 62A.1-201(21)(A)).
5 If a note is endorsed in blank it is “payable to bearer and may be negotiated by transfer of
6 possession alone.” RCW 62A.3-205(b). Therefore, the loan servicer was the holder
7 because it possessed the note endorsed in blank. *Brown*, 359 P.3d at 783. The court
8 noted that the definition of holder focuses on possession of the note rather than ownership
9 “in order to protect the borrower from being sued fraudulently or by multiple parties on
10 the same note.” *Id.* at 778-79. “After discharging its obligations to the [person entitled to
11 enforce the note], the borrower cannot thereafter be held liable on the note by another
12 party, such as the note owner.” *Id.* at 779. “A [borrower] cannot object to suit by the
13 payee-holder on the ground that a third person has some interest in the proceeds of the
14 note, as such right is against the holder and does not affect the liability of the [borrower]
15 on his or her note.” *Id.* (quoting 5A ANDERSON ON THE UNIFORM COMMERCIAL CODE
16 § 3-301:6, at 568-69).

17 **B. Cross-Motions for Summary Judgment**

18 Mr. Lake seeks to quiet title to the Property under RCW 7.28.300 on the grounds
19 that an action to foreclose his deed of trust is barred by the statute of limitations.
20 (SAC ¶¶ 18, 36.); RCW § 7.28.300 (providing a cause of action for “[t]he record owner
21 of real estate” to “maintain an action to quiet title against the lien of a mortgage or deed
22 of trust on the real estate where an action to foreclose such mortgage or deed of trust

1 would be barred by the statute of limitations”). The parties do not dispute that Quality
2 commenced foreclosure proceedings by issuing a notice of default on January 29, 2016,
3 before the expiration of the statute of limitations on September 5, 2016. (*See* Notice of
4 Default; *see generally* SAC.) Instead, Mr. Lake alleges that Quality was not a validly
5 appointed trustee and so the foreclosure proceedings were not lawfully commenced
6 within the limitations period. (*See* SAC ¶ 21 (“Quality was never a legally appoint[ed]
7 Trustee and had no legal authority to issue a Notice of Default and . . . Notice of
8 Trustee’s Sale.”).) Mr. Lake alleges that Nationstar was never the holder of Mr. Lake’s
9 promissory note, so Nationstar could not act as the note’s beneficiary by appointing
10 Quality to conduct foreclosure proceedings. (*See id.* ¶ 12.) He further contends that
11 MTGLQ is not the present holder of the note and thus lacks authority to continue
12 foreclosure efforts. (*See id.* ¶ 15.)

13 Defendants argue that they are entitled to summary judgment because the evidence
14 shows that Nationstar lawfully appointed Quality as trustee pursuant to Washington’s
15 Deed of Trust Act. (*See* Def. Mot. at 3.) Defendants contend that “Nationstar held the
16 Note, endorsed-in-blank, and was therefore the Deed of Trust ‘beneficiary’ with the
17 authority to appoint Quality as successor trustee.” (*Id.*) Defendants further contend that
18 MTGLQ is the present holder of the note with the authority to foreclose. (*Id.* at 4.)
19 MTGLQ submits evidence showing that prior to issuing the notice of default, Quality
20 obtained from Nationstar (1) a copy of Mr. Lake’s promissory note endorsed in blank and
21 (2) a beneficiary declaration in which Nationstar states that it is “the actual holder of the
22 promissory note.” (*See* Herbert-West Decl. at 2; Nationstar Beneficiary Decl.). MTGLQ

1 also submits evidence that prior to issuing the notice of trustee's sale, Quality obtained a
2 beneficiary declaration from an authorized agent of MTGLQ stating that MTGLQ is "the
3 actual holder of the promissory note." (*See* MTGLQ Beneficiary Decl.) Finally,
4 MTGLQ submits a declaration from MTGLQ's loan servicer (1) averring that its business
5 records indicate the original promissory note is currently held by MTGLQ and (2)
6 attaching a copy of the promissory note endorsed in blank. (*See* Sahyers Decl. at 2,
7 Ex. A.)

8 Mr. Lake opposes Defendants' motion and argues that he is entitled to summary
9 judgment. (*See generally* Def. Mot.) Mr. Lake does not present evidence that contradicts
10 MTGLQ's declarations. Instead, his arguments rely on three legal theories: (1) that
11 MTGLQ is required to produce the original note; (2) that the assignment of his deed of
12 trust to Nationstar and subsequently to MTGLQ was invalid; and (3) that the
13 securitization of his note impedes foreclosure. (*See* Pltf. Mot.) Mr. Lake's legal theories
14 fail as a matter of law.⁸

15 1. Production of the Original Note

16 Mr. Lake argues that he is entitled "to see the note endorsed in blank." (Pltf. Mot.
17 at 5.) To the extent that Mr. Lake argues that MTGLQ must produce the original note for

18 ⁸ In addition to matters of public record of which the court has taken judicial notice (*see*
19 *supra* § II. n.2), Mr. Lake relies on various exhibits attached to his second amended complaint
20 and cross-motion for summary judgment to support his theories (*see* Pltf. Mot. at 8). These
21 exhibits include correspondence he received from a number of entities relating to his loan. (*See*
22 SAC, Ex. C-D; Pltf. Mot. at 10, Ex. H.) MTGLQ contends that at least one exhibit Mr. Lake
relies on is hearsay. (*See* Reply (Dkt. # 39) at 2.) A court may not consider hearsay evidence in
deciding whether material facts are at issue in summary judgment motions. *Steven N.S. Cheung,*
Inc. v. United States, No. C04-2050RSM, 2006 WL 2473487, at *3 (W.D. Wash. Aug. 28, 2006)
(citing *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 345 (9th Cir. 1995)).

1 him to see, courts in this district have repeatedly concluded “[t]here is no requirement
2 that the foreclosing party show the borrower the actual note.” *Blake v. U.S. Bank Nat.*
3 *Ass’n*, No. C12-2186MJP, 2013 WL 6199213, at *2 (W.D. Wash. Nov. 27, 2013), *aff’d*
4 *sub nom. Blake v. U.S. Bank NA*, 671 F. App’x 983 (9th Cir. 2016) (“Under Washington
5 law, the only proof of beneficial ownership required prior to foreclosure is a ‘declaration
6 by the beneficiary made under penalty of perjury stating that the beneficiary is the actual
7 holder of the promissory note.’”). Mr. Lake contends that a copy of the note endorsed in
8 blank is not in the record. (*See* Pltf. Mot. at 5.) But contrary to his assertions, MTGLQ
9 submitted a copy, which is in the record attached as an exhibit to the Declaration of
10 Christine Sahyers. (*See* Sahyers Decl., Ex. A.) Any claim that Quality cannot properly
11 foreclose unless MTGQL shows Mr. Lake the original note fails as a matter of law.

12 2. Validity of the Assignment of the Deed of Trust

13 Second, Mr. Lake alleges that the assignment of his deed of trust from MERS to
14 NYCB was invalid because MERS is not a lawful beneficiary. (SAC ¶ 9; Pltf. Mot. at 2
15 (citing *Bain*, 285 P.3d 34).) As a result, he contends, the subsequent assignments of his
16 deed of trust from NYCB to Nationstar and from Nationstar to MTGLQ were invalid.
17 (SAC ¶ 9.) However, the DTA “contemplates that the security interest will follow the
18 note, not the other way around.” *Bain*, 285 P.3d at 44. The “transfer of the [note] alone
19 will carry the [deed of trust] along with it.” *Bavand v. OneWest Bank*, 385 P.3d 233, 248
20 //

21 The court need not decide whether it may properly consider Mr. Lake’s exhibits; even if the
22 court were to consider the exhibits as evidence of facts to support Mr. Lake’s legal theories, the
facts are not material because Mr. Lake’s legal theories fail as a matter of law.

(Wash. Ct. App. 2016), *as modified* (Dec. 15, 2016) (internal quotation marks omitted) (alteration in original). Thus, “the noteholder is entitled to enforce both the note and the [deed of trust] by operation of law.” *Robinson v. Wells Fargo Bank Nat’l Ass’n*, No. C17-0061JLR, 2017 WL 2311662, at *4 (W.D. Wash. May 25, 2017). In other words, the power to initiate foreclosure lies with the holder of the promissory note “regardless of any assignment of the deed of trust.” *Blake*, 2013 WL 6199213, at *2 (W.D. Wash. Nov. 27, 2013); *see, e.g., Ukpoma v. U.S. Bank Nat. Ass’n*, 12-CV-0184-TOR, 2013 WL 1934172, at *3 (E.D. Wash. May 9, 2013) (“[B]y virtue of being in possession of the note . . . [U.S. Bank’s] right to receive payment on the note does not depend upon any assignment of the note.”); *Massey v. BAC Home Loans Servicing LP*, No. C12-1314JLR, 2013 WL 6825309, at *6 (W.D. Wash. Dec. 23, 2013) (“Bank of America’s authority to foreclose on the loan stemmed from the fact that Bank of America held the Note,” and therefore plaintiff’s “argument that the Assignment [of the deed of trust] is ‘without effect and a nullity’ . . . is beside the point.”).

Furthermore, Mr. Lake lacks standing to challenge the assignments of his deed of trust. *See Gelinas v. Bank of Am., N.A.*, No. 16-1355RAJ, 2017 WL 1153859, at *2-3 (W.D. Wash. Mar. 28, 2017). A borrower, as a third party to the assignment of his deed of trust, “cannot mount a challenge to the chain of assignments unless [he] has a genuine claim that [he is] at risk of paying the same debt twice if the assignment stands.” *Borowski v. BNC Mortg. Inc.*, No. C12-5867RJB, 2013 WL 4522253, at *5 (W.D. Wash. Aug 27, 2013). Mr. Lake does not allege that any party other than MTGLQ claims to be in possession of his note or that multiple parties have demanded payment from him. (*See*

1 *generally* SAC; Plt’s Mot.) His contention that another party could “come forward at
2 some future date, and present[] the note” is too speculative to demonstrate a genuine
3 claim of risk, and is directly contradicted by MTGQL’s proof that it possesses the
4 original note. (SAC ¶ 14). Accordingly, there is no reason to find that Mr. Lake is at risk
5 of paying the same debt twice.

6 Relatedly, Mr. Lake contends that neither Nationstar nor MTGLQ ever acquired a
7 beneficial interest in the note. (SAC ¶ 9.) Mr. Lake’s contention appears to stem from
8 the misunderstanding that the note follows the deed of trust, which, as explained above, is
9 not the law in Washington. Even if Nationstar and MTGLQ never acquired a beneficial
10 interest in the note, DTA beneficiary status depends on whether a party possesses the
11 note, not whether a party is the owner entitled to the economic benefits of the note. *See*
12 *Brown*, 359 P.3d at 779, 784; *supra* § III.A.2.

13 3. Securitization

14 Mr. Lake’s arguments suggest that the securitization of his loan is an impediment
15 to foreclosure. (*See* SAC ¶ 25; Pltf. Mot. at 5.) However, this contention also lacks merit
16 because “the authority to foreclose on a defaulting loan remains with the noteholder when
17 a loan is securitized.” *Blake*, 2013 WL 6199213, at *3. The theory that the securitization
18 of a note voids a borrower’s debt obligations has been rejected by numerous Washington
19 courts. *See Pearse v. First Horizon Home Loan Corp.*, No. C16-5627BHS, 2016 WL
20 5933518, at *7 (W.D. Wash. Oct. 12, 2016) (collecting federal and state cases).

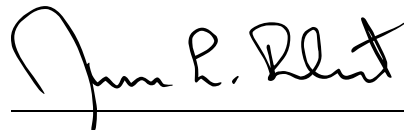
21 Because Mr. Lake’s legal theories fail as a matter of law, he is not entitled to
22 summary judgment. Defendants have demonstrated that Nationstar held the note

1 endorsed in blank, and was thus the proper DTA beneficiary with the authority to appoint
2 Quality to issue the notice of default. (*See* Herbert-West Decl., Ex. B, C); *Brown*, 359
3 P.3d at 784. At the summary judgment stage, Mr. Lake cannot rely upon the mere
4 allegations in his pleadings that Nationstar and MTGLQ were “never . . . ‘Holder[s] of
5 the note’ at any time” (SAC ¶ 10; *see id.* ¶ 15; Pltf. Mot. at 3), but must present
6 “significant probative evidence” to support his claim, *Intel Corp.*, 952 F.2d at 1558.
7 Because Mr. Lake has not met this burden, there is no genuine dispute of material fact
8 and Defendants are entitled to judgment as a matter of law. Accordingly, the court grants
9 Defendants’ motion for summary judgment and denies Mr. Lake’s motion for summary
10 judgment.

11 IV. CONCLUSION

12 Based on the foregoing analysis, the court GRANTS Defendants’ motion for
13 summary judgment (Dkt. # 33); DENIES Mr. Lake’s motion for summary judgment
14 (Dkt. # 37); and DISMISSES Mr. Lake’s second amended complaint with prejudice
15 (Dkt. # 28).

16 Dated this 1st day of September, 2017.

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19 JAMES L. ROBART
20 United States District Judge
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